

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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|                          |   |                           |
|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA | ) |                           |
|                          | ) |                           |
| v.                       | ) | CRIMINAL NO. 04-10090-WGY |
|                          | ) |                           |
| MICHAEL WHITMORE         | ) |                           |
|                          | ) |                           |

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**ASSENTED-TO MOTION FOR LEAVE TO FILE  
GOVERNMENT'S RESPONSE TO SUBSTITUTE MOTION TO  
SUPPRESS EVIDENCE WITH INCORPORATED MEMORANDUM OF LAW**

The government hereby moves for leave to file the Government's Response To Substitute Motion to Suppress Evidence With Incorporated Memorandum of Law, which is submitted herewith. As grounds, the government states that, in his last submission, the defendant asserts that under, United States v. Lott, 870393 F.23d 778 (1st Cir. 1989), the question whether an officer had reasonable suspicion to justify a Terry frisk, as opposed to a Terry stop, turns on the officers subjective intent in conducting the frisk. The government seeks to provide the Court with authority that demonstrates that this argument fails as a matter of law.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ John A. Capin

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